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## DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

*[Protest of EPA Acquisition of Multiprocessor Computer From IBM]*

FILE: B-198910, B-199942

DATE: April 27, 1981

MATTER OF: Amdahl Corporation

## DIGEST:

Market survey used to support determination that purchase of excess leased ADP equipment represents lowest cost to Government is defective where based solely on results of another agency's procurement of equipment which did not meet first agency's needs. Consequently, protest of agency's purchase of excess leased computer is sustained.

Amdahl Corporation protests the Environmental Protection Agency's (EPA) acquisition of an excess Government leased IBM 370/168-3MP multiprocessor\* computer from IBM after EPA determined that the excess leased 370/168-3MP represented the lowest cost alternative which would meet EPA's requirements. Excess automatic data processing equipment (ADPE) is that which is controlled by a Federal agency but not required for its needs. Federal Property Management Regulations (FPMR) § 101-36.301-4, 41 C.F.R. § 101-36.301-4 (1980), and may be transferred to another agency in accordance with FPMR subpart 101-36.3.

Amdahl alleges that the lowest cost determination was defective for several reasons. We find that the determination was indeed defective and sustain the protest. Nevertheless, we do not recommend any corrective action because EPA, which has been making installment

\* A multiprocessor is in fact two central processing units in a tightly coupled configuration in which both units share a single operating system permitting access to all the memory storage from either one. In a loosely-coupled system, each central processing unit requires its own operating program (or system) and only has access to the memory storage dedicated to its use.

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purchase payments, has informed us that it does not intend to make the Fiscal Year 1982 payment to complete the purchase of the 370/168-3MP but instead intends to replace it through a competitive procurement as soon as possible. Also, in light of our resolution of this matter, we need not consider a second Amdahl protest objecting to EPA's purchase of equipment to be used with the IBM 370/168-3MP on the grounds that the purchase might prejudice Amdahl's opportunity to obtain meaningful relief in the first protest.

### I. Background

EPA determined to purchase the excess leased 370/168-3MP as an interim measure towards implementing a long-term ADPE procurement plan. In late February of 1980 when EPA became aware of the unit's availability, EPA was using two ADP centers -- the Washington Computer Center (WCC) in the District of Columbia and what is presently called the National Computer Center (NCC) in Research Triangle Park, North Carolina. The WCC was owned and operated by a time-sharing services contractor, Computer Network Corporation (COMNET), using one IBM 370/168 and one IBM 3032 (both uniprocessors), whose capacity was almost saturated. The COMNET contract, which also included telecommunications services for both centers, cost the Government approximately \$1 million per month. EPA had already determined that it would be more economical to replace the WCC with the acquisition of more powerful IBM or equal hardware for installation in NCC, consolidating EPA's ADP management and operations in NCC.

-- EPA had hoped to replace COMNET's contract, due to expire on December 6, 1980, with its own in-house operation using two IBM 3033 (uniprocessor) or equal central processing units (CPUs) in a loosely-coupled system to accomplish the workload previously done at the WCC, plus an anticipated increase. However, EPA's Inspector General questioned the need for the total number of CPUs projected in the five-year plan and caused the dual 3033 or equal procurement to be postponed until the agency could reevaluate its needs. Consequently, EPA did not expect that it could complete a competitive procurement of dual 3033 or equal equipment in sufficient time to avoid having to

extend COMNET's time-sharing services contract at least three months.

The announced availability of the excess leased 370/168-3MP suggested another option to EPA. Soon after learning of the excess unit's availability, EPA determined that the 370/168-3MP would have the same capacity as COMNET's 370/168 and 3032 configuration and that by purchasing the excess unit it could avoid having to extend COMNET's contract. EPA determined that the acquisition of the equipment would result in savings exceeding \$2 million in Fiscal Year 1981. Therefore, EPA requested GSA to transfer the excess equipment to EPA.

GSA's response, dated April 2, 1980, advised EPA that the reutilization of excess leased ADPE is a procurement subject to the applicable laws and regulations governing procurements by Federal agencies, which generally require that the agency first determine that the acquisition is the lowest cost alternative satisfying the agency's requirements. GSA further advised EPA that the Department of Energy (DOE) was currently soliciting proposals for a 370/168-3MP or like system (as discussed below, GSA was mistaken in this regard), and that these proposals "will reveal current market prices and should be adequate for making a determination that the purchase of the excess 370/168-3MP is the least cost alternative."

Accordingly, GSA instructed EPA to review the proposals submitted to DOE and to formalize a lowest cost determination (required by GSA to transfer the equipment to EPA) if EPA's review of those proposals indicated that EPA's acquisition of the excess 370/168-3MP was the lowest cost alternative, price and other factors considered, that would satisfy EPA's requirement.

EPA reviewed the proposals submitted under DOE's solicitation, and on April 24, 1980, the contracting officer issued a determination and findings that the excess leased 370/168-3MP was the lowest cost alternative. GSA issued an order transferring the unit to EPA that very day -- one day before the Government's option to purchase it and to utilize purchase credits accrued during the term of of the lease expired.

## II. Lowest Cost Analysis

EPA's written lowest cost analysis and determination and findings essentially were limited to a review of the proposals submitted under DOE's solicitation, the costs of the excess leased MP, and the costs of extending COMNET's contract or negotiating a new contract with COMNET.

EPA's report also suggested that the selection of an alternative to the IBM 370/168-3MP would have required a competitive solicitation resulting in a substantial cost to the Government for each month delivery was delayed beyond May 1, 1980. In this regard, the written lowest cost analysis also noted that alternative acquisition methods have a potential for disruption of services at a cost which cannot be measured.

The May 1 deadline originated in a memorandum dated April 17, 1980, and prepared by the Director of EPA's Management Information and Data Systems Division, which advised the contracting officer that EPA could avoid the expense of extending COMNET's contract only if the replacement system could be delivered by May 1, 1980. That date was dictated by the anticipated seven-month transition period (May 1 to December 6, when the COMNET contract expired) necessary to effect the conversion from COMNET to a replacement system.

## III. Discussion

[GSA generally has exclusive statutory authority to procure ADPE] 40 U.S.C. § 759 (1976), [and Federal agencies generally must request a delegation of procurement authority (DPA) from GSA to purchase ADPE.] Federal Procurement Regulations (FPR) §§ 1-4.1103 (1964 ed., amend. 170) and 1-4.1104 (1964 ed., amend. 181).\*

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FPR subpart 1-4.11 has been revised by 46 Fed. Reg. 1196-1213 (1981). Since the procurement was conducted prior to the revisions, we will refer in this decision only to the regulatory provisions that were applicable at the time.

[GSA granted a DPA to EPA. A supplemental GSA letter advised EPA that the purchase of excess leased equipment is subject to applicable procurement laws and regulations. The regulations provide for maximum practicable competition.] FPR § 1-4.1107-2 (1964 ed., amend. 170). [Although a competitive solicitation is the usual method for obtaining maximum competition, the regulations envision circumstances where instead a sole source finding and determination will be made and documented or a finding and determination will be documented that the equipment to be purchased represents the lowest overall cost to the Government.] See FPMR § 101-36.303-2(b); FPR § 1-4.1107-6(b) (2)(iii) (FPR Temp. Reg. 46, 41 C.F.R. Appendix to Chapter 1 (1979), made applicable to this procurement by 44 Fed. Reg. 52208 (1979)).\* [This determination] cannot be made in a vacuum -- it normally [must follow some testing of the market such as through the issuance of a solicitation or the publication of a synopsis in the Commerce Business Daily.] FPR § 1-4.1107-6(b) (2)(iii) (Temp. Reg. 46, supra); see B-176264, December 6, 1972. [In this case, GSA informed EPA that a lowest cost determination would suffice and that "some form of market survey or test is required." GSA pointed to the DOE procurement as one that "should be adequate" for the market test.]

Under the circumstances, we think [the DOE procurement was not adequate for that purpose and that] EPA should have known it and not relied on GSA's advice in this regard. [As EPA points out in a report to this Office, DOE's solicitation did not require a system equal in all respects to a 370/168-3MP system, [but a system of any configuration] (i.e., multiprocessor; loosely-coupled system; or uniprocessor) [having the same capacity as a single IBM 370/168-3 uniprocessor. In other words, DOE could have accepted an offer of a uniprocessor. Unlike DOE, EPA required a multiprocessor or a loosely-coupled configuration. Consequently an offer of a single CPU might have satisfied DOE's requirement but not EPA's. The record clearly indicates that EPA was aware of this at the time it reviewed DOE's offers which included an offer of at least one uniprocessor and only one offer of equipment which could meet EPA's needs (but which EPA did

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\* Temp. Reg. 46 was also superseded by 46 Fed. Reg. 1196, supra.

not consider for other reasons). Therefore, EPA was not entitled to rely on GSA's mistaken assumption that a review of those offers would suffice as a market survey.]

In fact, [Amdahl's offer of a single V/7 uniprocessor -- being about \$500,000] less expensive and slightly less powerful than the 370/168-3MP -- was ultimately successful in DOE's procurement. However, EPA believed the V/7 did not meet its requirements because the V/7 was not a multiprocessor and two V/7s in a loosely-coupled configuration would be prohibitively expensive. Thus, [it is apparent that EPA assumed Amdahl and other offerors could not offer less costly equipment that would meet EPA needs, but did not in fact conduct or rely on any meaningful market survey which indicated that such was the case. Without such a survey, it could not properly document a lowest cost determination. Accordingly, we find that determination to be insufficient to support the acquisition of the excess equipment.]

[EPA also justified acquiring the excess equipment on the basis that the acquisition of alternative equipment would have required the issuance of a competitive solicitation resulting in a delay of the award and delivery dates to such an extent as to render any alternative too expensive.] As previously stated, EPA determined that delivery had to occur by May 1, 1980, to avoid extending COMNET's contract, and that any delay would cost EPA \$1 million per month.

We first point out that [since Amdahl's equipment is listed in a nonmandatory ADP Schedule contract, an Amdahl alternative could have been selected without a competitive solicitation but on the basis of a lowest cost analysis.] See FPR § 1-4.1107-6(b)(2)(iii), supra. In any event, [both the \$1 million amount and the May 1 deadline are questionable.]

The \$1 million per month cost of delay appears to be grossly overstated since that figure represents the approximate monthly amount EPA was paying COMNET for its time-sharing and telecommunications services for both computer centers. A proper computation of a cost of a delay should not include the latter since EPA would incur telecommunications costs regardless of which alternative it selected. Moreover, [in utilizing the excess leased equipment EPA would incur considerable expense to operate the system, which apparently also was not considered in the computation of the \$1 million cost.]

[The record indicates that these two factors would offset a goodly portion of the \$1 million per month EPA allegedly would have paid to extend COMNET's contract.] In fact, EPA recognized this after Amdahl objected to the \$1 million figure, and in a subsequent report to this Office asserted that extending COMNET's contract would cost the Government about \$541,000 per month after the telecommunications and operational costs of the 370/168-3MP were considered. However, documents prepared by EPA prior to or contemporaneously with the 370/168-3MP acquisition, e.g., EPA's own lowest cost analysis, show that EPA considered the relative cost of extending COMNET's contract to be only \$250,000 per month. (The report on the protest introduced the \$1 million figure.)

Moreover, [there is some question whether EPA's May 1 deadline was reasonable.] The same EPA memorandum justifying the deadline stated that the seven month installation period (May to the December expiration of the COMNET contract) was "ambitious and any delays will have the direct results of extending the current COMNET contract." Although the memo advised that seven months was close to the industry standard for this type of conversion, it also noted that EPA's project was more difficult than such conversions generally due to the uniqueness of EPA's system. Thus, [EPA may well have had to extend COMNET's contract even with selection of the IBM equipment, in which case the cost differential between acquisition of the excess equipment and any other equipment obtained through competition would be less than suggested by EPA.]

The protest on this issue is sustained.]

[After Amdahl filed its protest with this Office, EPA undertook an analysis of whether an Amdahl dual processor system other than two V/7s could satisfy EPA's requirement at a lower cost than the excess leased 370/168-3MP.]

EPA determined in its post-protest exercise that a pair of Amdahl V/6s was Amdahl's lowest, and consequently cheapest model system equal to the 370/168-3MP. In fact, EPA determined that the dual V/6 LC system has 1.16 the capacity of the 370/168-3MP. However, EPA determined that the V/6 system would be more costly than the excess leased equipment principally because it has a higher purchase price and would cost the agency \$500,000 per year more to operate than a multiprocessor system.

EPA's conclusion that the V/6 system, allegedly the lowest model Amdahl equipment which will satisfy EPA's need, is more costly than the 370/168-3MP is questionable. For example, EPA failed to identify all the costs associated with using old equipment, such as high operating expenditures, extraordinary maintenance expenses, excessive energy consumption to operate and cool the equipment, and additional costs of supplemental services. Amdahl's equipment is considerably newer than the 370/168-3MP, and as such might be more economical and efficient. See generally Report to the Congress by the Comptroller General, Continued Use of Costly, Outmoded Computers in Federal Agencies Can Be Avoided, AFMD-81-9, December 15, 1980. A lowest cost determination should take into account the costs of old equipment and the cost advantages of modern equipment to the extent such factors involve a significant expenditure or savings of funds over the systems life. See FPMR § 101-36.402-14.

In any case, EPA has informed us that it does not intend to make further payments towards the purchase of the excess leased 370/168-3MP, and intends to replace it through a competitive procurement of a dual 3033 LC or equal system in Fiscal Year 1982. Therefore, we sustain the protest but do not recommend any corrective action. Since EPA is replacing the 370/168-3MP at the earliest opportunity, there is no need to consider Amdahl's protest regarding the peripheral equipment.

*Milton J. Aorolan*

Acting Comptroller General  
of the United States